

**REMARKS**

Claims 1-9 are pending. Claims 5 and 9 are independent.

Applicants wish to thank the Examiner and Examiner's Primary Examiner for courtesy of conducting an interview with Applicant's representative on August 15, 2002. As discussed in the interview and reflected on the Interview Summary, the Examiner has agreed to withdraw the present rejection under Liu (U.S. Pat. No. 6,140,705). However, the Examiner indicated that he thought the claims could also be rejected according to the depiction of the "conventional art" of Fig. 1c, which the Examiner indicated he considered "admitted prior art".

**Specification**

Applicants have reviewed the Specification and have identified that Fig. 1c of the "conventional art" was inadvertently inaccurately depicted. In particular, the junction of sidewall spacers 6 in the area of the contact hole appear to abut the interlayer insulating layer 8, conductive layer 10 and the gate structures 3a and 3b. However, as indicated in the amended Fig. 1c submitted herewith in the Drawing Change Authorization Request, the sidewall spacers 6 the conductive layer 10 and gate structures 3a and 3b, and do not abut the interlayer insulating layer 8.

Applicants respectfully submit that no new matter is added by this amendment to Fig. 1c. Rather the amendment more accurately reflects the conventional art.

**Fig. 1c is not Admitted Prior Art**

As discussed by Applicant's representative during the interview, it is inappropriate to consider Fig. 1c as "admitted prior art." Applicants respectfully submit that the suggestion in MPEP § 608.02(g) of the use of the phrase --Prior Art-- does not exclude the use of alternate phrases, for example, "Background Art" and "Conventional Art". These alternative phrases may be found in many U.S. Patents issued today. The intent of MPEP § 608.02(g) is to distinguish Applicants' invention from that which is not Applicants' invention. If a drawing figure illustrates only material which is *known* to be statutory prior art to the invention, then the use of the phrase --Prior Art-- in the drawing figure would be proper. However, if it is not clear whether such material is statutory prior art, then the use of the phrase --Prior Art-- in the drawing figures would not be proper, and a label such as "Background Art" or "Conventional Art" would be more appropriate.

If Applicants knew that the "Conventional Art" of Figs. 1a-1c was "Prior Art", Applicants would have labeled it as such. Accordingly, it would be inappropriate to consider either the amended or originally filed Fig. 1c as "admitted prior art".

**Rejection Under 35 U.S.C. § 102(e)**

Claims 1-4 have been rejected under 35 U.S.C. § 102(e) as being unpatentable over Liu. Applicants respectfully traverse this rejection.

As discussed in the Interview and stated on the Interview Summary, upon further review of the claims and Liu reference, the Examiner has agreed to withdraw the Liu rejection. Therefore, this rejection is moot and Applicants respectfully request removal of this rejection.

**Rejection Under 35 U.S.C. § 103(a)**

Claims 5-9 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Liu in view of Lien (U.S. Pat. No. 5,790,452). Applicants respectfully traverse this rejection.

As discussed above, the Examiner is withdrawing the rejection under Liu. Applicants assume that this pertains to the removal of Liu in this rejection, also. The Examiner relies on Lien to make up for the deficiencies of Liu. Lien discloses a memory cell having asymmetrical source/drain pass transistors. However, a review of Lien indicates that it does not makeup for the deficiencies of Liu which have lead to the withdrawal of Liu from this rejection.

Accordingly, claim 5 is allowable over the prior art. Regarding dependent claims 6-9, these claims are allowable at least for the same reasons as discussed with respect to their corresponding independent claim 5. Therefore, Applicants respectfully request removal of this rejection.

**CONCLUSION**

In view of the above amendments and remarks, reconsideration of the rejection and allowance of claims 1-9 is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to contact Jayne Saydah (Reg. No. 48,796) at (703) 205-8000, in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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